

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 OTTAWA 0158

LIMDIS

FOR DEPUTY SECRETARY INGERSOLL AND UNDER SECRETARY MAW
FROM JOHN NORTON MOORE

USUN PASS AMBASSADOR STEVENSON

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: NEGOTIATIONS WITH CANADIANS ON ENVIRONMENTAL SPECIAL
AREA FOR ARCTIC AND TRANSIT OF INTERNATIONAL STRAITS

1. SUMMARY: NEGOTIATIONS WITH CANADIANS ON
ENVIRONMENTAL REGIME IN ARCTIC FOR VESSEL-SOURCE POLLUTION
AND ON UNIMPEDED TRANSIT OF STRAITS PROMISING AND
PRODUCTIVE. THOUGH FINAL PACKAGE AGREEMENT NOT YET
FINALIZED, TWO DAYS OF TALKS SIGNIFICANTLY NARROWED
AREAS OF DISAGREEMENT. TALKS RANGED OVER FULL RANGE OF
VESSEL-SOURCE POLLUTION ISSUES, REGIME FOR ICE COVERED
AREAS OF ARCTIC, THE NORTHWEST PASSAGE, STRAITS OF
GEORGIA AND HEAD HARBOUR PASSAGE, ARCHIPELAGOES, AND
GENERAL STRAITS REGIME. AMBASSADOR ALAN BEESLEY, THE PRINCIPAL
CANADIAN LOS NEGOTIATOR, CHARACTERIZED TALKS AS THE
MOST PRODUCTIVE TALKS WITH US IN HIS FIFTEEN YEARS
EXPERIENCE. MOST IMPORTANTLY, CANADIANS INDICATED IN
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INFORMAL STRAITS PAPER ACCEPTANCE OF PRINCIPLES OF

SUBMERGED TRANSIT AND OVERFLIGHT OF STRAITS USED FOR INTERNATIONAL NAVIGATION. PRINCIPAL REMAINING DIFFERENCE IN WAY OF PACKAGE AGREEMENT ON STRAITS AND VESSEL-SOURCE POLLUTION ISSUE IS NATURE OF INTERNATIONAL REVIEW PROCEDURE FOR ADOPTION OF STANDARDS FOR VESSEL-SOURCE POLLUTION IN ICE COVERED AREAS WITHIN ARCTIC. CANADIANS SEEMED TO WELCOME FRAMEWORK OF TALKS WHICH EXPLORED POSSIBLE PACKAGE AGREEMENT BASED ON US SUPPORT FOR LIBERAL VESSEL-SOURCE POLLUTION REGIME IN ICE COVERED AREAS IN RETURN FOR CANADIAN SUPPORT ON UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION, AGREEMENT TO CONFINE MORE LIBERAL REGIME TO ICE COVERED AREAS, AND AGREEMENT TO FOREGO STANDARD SETTING ON VESSEL-SOURCE POLLUTION WITHIN THE ECONOMIC ZONE OUTSIDE OF ICE COVERED AREAS. ALTHOUGH US TEAM PRESSED TO FINALIZE AGREEMENT, CANADIANS UNABLE TO GO FURTHER WITHOUT CONSULTING MINISTERS. END SUMMARY.

2. JOHN NORTON MOORE, THE DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE, AND US TEAM INCLUDING STUART FRENCH (DIRECTOR LOS TASK FORCE DOD), TERRY LEITZELL (ATTORNEY-ADVISER OFFICE OF ASST. LEGAL ADVISER FOR OCEANS, ENVIRONMENT AND SCIENTIFIC AFFAIRS), DAVID COOK (COUNCIL ON ENVIRONMENTAL QUALITY EXECUTIVE OFFICE OF THE PRESIDENT), GLENN YOUNG (SPECIAL ASST. TO DEPUTY SECRETARY FOR TRANSPORTATION), AND E. V. NEF (US EMBASSY OTTAWA) MET WITH CANADIAN LOS TEAM HEADED BY AMBASSADOR ALAN BEESLEY AND EDWARD LEE (LEGAL ADVISER, EXTAFF), LEONARD H. LEGAULT (DIR. GEN. INTERNATIONAL FISHERIES AND MARINE DIRECTORATE, DEPT OF ENVIRONMENT), PAUL A. LAPINTE (HEAD, LAW OF THE SEA SECTION, LEGAL OPERATIONS DIVISION, EXTAFF), ARMAND DEMESTRAL (CONSTITUTIONAL, ADMINISTRATIVE AND INTERNATIONAL LAW SECTION, DEPT OF JUSTICE), MICHAEL B. PHILLIPS (HEAD, ENVIRONMENTAL AND FISHERIES LAW SECTION, LEGAL OPERATIONS DIVISION, EXTAFF), ROBERT AUGER (LAW OF THE SEA SECTION, LEGAL OPERATIONS DIVISION, EXTAFF), E. JOHN COOPER (TERRITORIAL WATERS OFFICER, CANADIAN HYDROGRAPHIC SERVICE, DEPT OF ENVIRONMENT), MISS MARY WALSH (INTERNATIONAL FISHERIES AND MARINE DIRECTORATE, CONFIDENTIAL

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DEPT OF ENVIRONMENT), COMMANDER ROGER EVANS (DIRECTORATE OF CONTINENTAL POLICY, POLICY PLANNING BRANCH, DEPT OF NATIONAL DEFENSE), AND L. S. CLARK (FIRST SECRETARY, CANADIAN EMBASSY, WASHINGTON), FOR FULL RANGE OF DISCUSSIONS ON VESSEL-SOURCE POLLUTION AND STRAITS ISSUES WITHIN LOS NEGOTIATION.

3. MOORE OPENED MEETING BY INDICATING US WILLINGNESS

WITHIN LOS NEGOTIATIONS TO WORK OUT AND SUPPORT MORE LIBERAL VESSEL-SOURCE POLLUTION REGIME FOR ICE COVERED AREAS IF CANADIANS WOULD SUPPORT CONFINING MORE LIBERAL REGIME TO ICE COVERED AREAS (WITH MILITARY EXEMPTION), UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION CONNECTING TWO AREAS OF THE HIGH SEAS, AND NO COASTAL STATE STANDARD SETTING FOR VESSEL-SOURCE POLLUTION WITHIN THE ECONOMIC ZONE OR STRAITS USED FOR INTERNATIONAL NAVIGATION EXCEPT WITHIN ICE COVERED AREAS. MOORE ALSO PROPOSED US AND CANADIAN LOS TEAMS AS PART OF PACKAGE AGREEMENT WOULD AGREE NOT TO REOPEN 1958 GENEVA DEFINITION OF STRAIT USED FOR INTERNATIONAL NAVIGATION, AND PARTICULARLY OUR CONCEPTUAL DIFFERENCES CONCERNING STATUS OF NW PASSAGE, WOULD AGREE NOT TO RAISE OUR DIFFERENCES CONCERNING EXTENSION OF ARCHIPELAGO CONCEPT FROM MID-OCEAN ISLAND STATES AND WOULD AGREE TO DISAGREE AT THIS TIME ON NATURE OF JURISDICTION TO ENFORCE INTERNATIONAL VESSEL-SOURCE POLLUTION STANDARDS WITHIN THE ECONOMIC ZONE OUTSIDE OF ICE COVERED AREAS.

4. CONCLUSION OF FIRST DAY OF DISCUSSIONS INDICATED AREAS OF AGREEMENT AND DISAGREEMENT IN PRINCIPLE SUBJECT TO OVERALL PACKAGE AGREEMENT. AREAS OF AGREEMENT AS FOLLOWS: THE BASIC FRAMEWORK FOR THE PACKAGE AGREEMENT, DEFINITION OF AREA AND CONFINING IT TO ICE COVERED AREAS, MILITARY EXEMPTION APPLICABLE TO ALL COASTAL STATE VESSEL-SOURCE POLLUTION JURISDICTION WITHIN TERRITORIAL SEA, ECONOMIC ZONE AND ICE COVERED SPECIAL AREAS, CONFINING ICE COVERED SPECIAL AREA REGIME TO AREA WITHIN THE ECONOMIC ZONE AND TERRITORIAL SEA, ADVANCE CONSULTATIONS ON SPECIFICS OF COASTAL STATE RECOMMENDED STANDARDS BY CANADIANS WITHIN ANY MORE

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LIBERAL REGIME FOR ICE COVERED AREAS BEFORE LOS CONFERENCE FINALIZES THE JURISDICTIONAL ISSUES, AGREEMENT TO SET ASIDE CONCEPTUAL DIFFERENCES ON NATURE OF THE NW PASSAGE AND NOT TO REOPEN DEFINITION OF STRAITS USED FOR INTERNATIONAL NAVIGATION, POSSIBILITY OF NOT OPENING DIFFERENCES ON EXTENSION OF ARCHIPELAGO CONCEPT FROM MID-OCEAN ISLAND STATES, STANDARD SETTING WITHIN

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MORE LIBERAL REGIME FOR ICE COVERED AREAS WOULD BE SUBJECT TO AGREEMENT ON REVIEW MECHANISM EXTENDED TO ALL SPECIAL STANDARDS REQUIRED, COASTAL STATE DISCHARGE STANDARD SETTING AUTHORITY IN THE TERRITORIAL SEA FOR VESSEL-SOURCE POLLUTION AND COASTAL STATE ENFORCEMENT OF SPECIAL CONSTRUCTION STANDARDS WITHIN ICE COVERED AREAS BASED ON INTERNATIONAL CERTIFICATE SYSTEM. AREAS OF DISAGREEMENT AS FOLLOWS: NATURE OF INTERNATIONAL REVIEW MECHANISM FOR SPECIAL STANDARDS PROMULGATED BY COASTAL STATES FOR ICE COVERED AREAS, COASTAL STATE ENFORCEMENT OF DISCHARGE STANDARDS WITHIN ICE COVERED AREAS, COASTAL STATE AUTHORITY TO SET CONSTRUCTION STANDARDS WITHIN THE TERRITORIAL SEA, COASTAL STATE JURISDICTION TO SET DISCHARGE STANDARDS THROUGHOUT THE ECONOMIC ZONE, AND COASTAL STATE STANDARD SETTING AUTHORITY FOR VESSEL-SOURCE POLLUTION WITHIN STRAITS USED FOR INTERNATIONAL NAVIGATION. THERE WAS AGREEMENT TO DISAGREE FOR PRESENT ON ENFORCEMENT OF VESSEL-SOURCE POLLUTION STANDARDS WITHIN ECONOMIC ZONE IN GENERAL AND ON NATURE OF ENVIRONMENTAL REGIME WITHIN STRAITS CONNECTING HIGH SEAS TO THE TERRITORIAL SEA OF A FOREIGN STATE AND THAT NEITHER OF THESE AREAS REQUIRED AGREEMENT FOR PACKAGE AGREEMENT.

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5. SECOND DAY OF DISCUSSIONS NARROWED GAP BY SUGGESTING

TRADE-OFF BETWEEN US SUPPORT FOR COASTAL STATE ENFORCEMENT OF DISCHARGE STANDARDS WITHIN ICE COVERED AREAS AND COASTAL STATE CONSTRUCTION STANDARD SETTING WITHIN TERRITORIAL SEA IN RETURN FOR CANADIAN SUPPORT FOR UNIMPEDED TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION CONNECTING HIGH SEAS TO HIGH SEAS AND NO STANDARD SETTING WITHIN THE ECONOMIC ZONE OR STRAITS CONNECTING HIGH SEAS TO HIGH SEAS EXCEPT AS OVERLAPPED BY SPECIAL ICE COVERED AREA REGIME (WITH, OF COURSE, SOVEREIGN IMMUNITY EXEMPTION).

6. PRINCIPAL DIFFERENCES TANDING IN WAY OF PACKAGE DEAL WERE NARROWED TO CHARACTER OF GEORGIA STRAIT (WAS IT A STRAIT USED FOR INTERNATIONAL NAVIGATION CONNECTING HIGH SEAS TO THE TERRITORIAL SEA OF A FOREIGN STATE), AN ISSUE WHICH CANADIAN TEAM FOCUSED ON REPEATEDLY AND WITH GREAT INTEREST, AND NATURE OF INTERNATIONAL REVIEW PROCESS FOR REVIEW OF SPECIAL STANDARDS PROMULGATED BY COASTAL STATE WITHIN ICE COVERED AREA. CANADIAN TEAM WILLING TO ACCEPT OBLIGATION TO REFER COASTAL STATE SPECIAL STANDARDS TO IMCO FOR NON-BINDING REVIEW AND SUBJECT TO BINDING REVIEW BY COMPULSORY DISPUTE SETTLEMENT PROCEDURES AS TO REASONABLENESS OF COASTAL STATE SPECIAL STANDARDS. CANADIAN TEAM ALSO SOUGHT EFFECTIVENESS OF SPECIAL STANDARDS AS OF TIME PROMULGATED BY COASTAL STATE. US TEAM PROPOSED BINDING REVIEW BY MEPC AND TACIT AMENDMENT PROCEDURE AND EFFECTIVENESS ONLY AFTER APPROVAL BY PROCESS AS WELL AS OPPORTUNITY FOR RECOURSE TO COMPULSORY DISPUTE SETTLEMENT. BOTH SIDES AGREED TO FOCUS ON THESE ISSUES FOR NEXT MEETING.

7. CANADIANS GAVE US INFORMAL DRAFT STRAITS ARTICLES AT CONCLUSION OF FIRST DAY WHICH THEY SAID HAD BEEN DISCUSSED WITH NO ONE ELSE AND THEY REQUESTED US COMMENTS. ARTICLES RECOGNIZED RIGHT OF OVERFLIGHT AND SUBMERGED TRANSIT IN STRAITS MORE THAN SIX MILES WIDE AND TRADITIONALLY USED FOR INTERNATIONAL NAVIGATION. ARTICLES ALSO CONTAINED SERIOUS PROBLEMS, PARTICULARLY

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PROVISIONS FOR NOTIFICATION CONCERNING HAZARDOUS SUBSTANCES, ELABORATE STRAITS COMMISSION FOR DISPUTE SETTLEMENT, AND EXTENSIVE COASTAL STATE REGULATORY POWER. BASED ON DISCUSSIONS, CANADIANS INDICATED THEY WOULD NOT USE ARTICLES IN EVANSON GROUP AT THIS TIME AND THEY INDICATED THEY WOULD WELCOME DETAILED US COMMENTS. THEY ALSO INDICATED THAT PRODUCTIVENESS OF DISCUSSIONS WOULD PERMIT THEM NOT TO WORK IN OPPOSITION TO US STRAITS OBJECTIVES EVEN PRIOR TO PACKAGE AGREEMENT.

8. AGREEMENT WAS REACHED TO HOLD FURTHER DISCUSSIONS
AT LUNCH DURING FIRST DAY OF EVANSON GROUP MEETING.

9. DURING DISCUSSION OF SALMON ISSUE AT LUNCH, CANADIANS
STRESSED IMPORTANCE OF EARLY AGREEMENT WITH JAPANESE IF
WE ARE NOT TO BE OUTVOTED ON SALMON, AND INDICATED THEIR
STRONG DESIRE FOR CLOSER COORDINATION ON SALMON ISSUE.
AGREEMENT REACHED ON MEETING OF LIKE-MINDED SALMON
STATES IN FEBRUARY AFTER EVANSON GROUP MEETING AND ON
PRE-MEETING BETWEEN CANADIAN AND US TEAMS TO COORDINATE
POSITIONS BEFORE FULL MEETING OF LIKE-MINDED STATES.

10. COMMENT: TALKS WERE PRODUCTIVE AND PROMISING.
CANADIAN AND US LOS TEAMS SEEM TO BE WELL ON WAY TO
WORKING OUT PACKAGE AGREEMENT ON STRAITS, VESSEL-SOURCE
POLLUTION AND ARCHIPELAGOES. MOST IMPORTANT BREAK-
THROUGH IS CONCEPTUAL FRAMEWORK OF REGIME FOR ICE COVERED
AREA AS PRACTICAL SOLUTION TO VESSEL-SOURCE POLLUTION
IN ECONOMIC ZONE AND NW PASSAGE CONCERNS OF CANADIANS,
WHILE AGREEING TO SET ASIDE CONCEPTUAL DIFFERENCES
OF TWO SIDES AS TO NATURE OF NW PASSAGE AND EXTENSION
OF ARCHIPELAGO CONCEPT FROM MID-OCEAN ISLAND STATES.
US TEAM PRESSED FOR FINALIZING UNDERSTANDING AT THIS
TIME. HAD CANADIAN TEAM FELT FREE TO MOVE ON OVERALL
PROPOSAL AT THIS TIME, IT SHOULD HAVE BEEN POSSIBLE
TO BRIDGE REMAINING DIFFERENCES.

11. MOORE AND LOS TEAM WOULD LIKE TO THANK
AMBASSADOR PORTER AND US EMBASSY OFFICERS WHO
CONTRIBUTED GREATLY TO ARRANGEMENTS FOR PRODUCTIVE
EXCHANGE.
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